

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Public Notice on the Interpretation of) MB Docket No. 12-83
The Terms "Multichannel Video)
Programming Distributor" and)
"Channel" as Raised in Pending)
Access Complaint Proceeding)
)
To: The Secretary
(via Electronic Filing Using ECFS:
<http://fjallfoss.fcc.gov/ecfs2/>)

For Delivery to the Commission

COMMENTS OF SAGA COMMUNICATIONS, INC.

Saga Communications, Inc. ("Saga"),¹ by its attorneys, and pursuant to 47 U.S.C. §4(j) and 47 CFR § 76.7(e), files these comments in response to the Public Notice, *Media Bureau Seeks Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" as Raised in Pending Program Access Complaint Proceeding*, DA 12-507, released March 30, 2012, in MB Docket No. 12-83.²

The Media Bureau seeks comment on two matters:

(1) "[T]he most appropriate interpretation of the terms 'channel' and 'MVPD'³ as defined in the Act;"⁴ and (2) "An alternative interpretation of the terms 'channel' and

¹ Saga is a broadcasting company whose business is devoted to acquiring, developing and operating broadcast properties. Saga is licensee of broadcast stations in 26 markets, including 61 FM and 30 AM radio stations, 3 full-power television stations and 4 low-power television stations.

² By Public Notice DA 12-634, released April 24, 2012, the Commission extended the date for Comments to May 14, 2012; thus this pleading is timely filed.

³ Multichannel Video Programming Distributor.

⁴ Communications Act of 1934, as amended (the "Act").

‘MVPD’ under which an entity would be considered an MVPD if it makes available for purchase multiple ‘video programming networks’ without regard to whether it offers a transmission path, in order to qualify as an MVPD.”

Some commentators will likely argue that the *sine qua non* of an MVPD is that it offers a “transmission path.” The concept of a transmission path is no longer relevant in light of technological advances since Congress enacted the 1984 Cable Act⁵ and the 1992 Cable Act.⁶ At that time, the only means (other than over the air reception) by which consumers could view television programs was by subscribing to a cable television, satellite delivery, or multiple multipoint distribution service (“MMDS”) system. The internet was in its infancy. Streaming media post-dates both the 1984 and 1992 Cable Acts.⁷ It is apparent, that had streaming media been readily available when Congress enacted the 1992 Cable Act, entities streaming video over the internet would have been included as MVPDs. Whether programming content is delivered by cable, satellite, MMDS, or the internet, is irrelevant to the consumer. Thus, whether the entity offers a transmission path is irrelevant to whether it qualifies as an MVPD.

The questions in the Public Notice (at ¶ 11) may be answered as follows: It is reasonable to use a cable-specific definition of the term "channel" to define the term "MVPD," which is intended to encompass video programming distributors that include, but are not limited to, cable systems. Likewise, the examples listed in the definition of "MVPD" should include entities that make available "multiple *channels* of video

⁵ Cable Communications Policy Act of 1984, Pub. L. No. 98-549, § 2, 98 Stat. 2779.

⁶ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷See http://en.wikipedia.org/wiki/Streaming_media for a short history of streaming media over the internet.

programming" when applying the cable-specific definition of the term "channel." Thus, there is every reason to interpret the phrase "multiple channels of video programming" in the more common, less technical sense to mean "multiple video programming networks." An entity should be legally treated as an MVPD if it makes available for purchase multiple video programming networks, regardless of the transmission path.

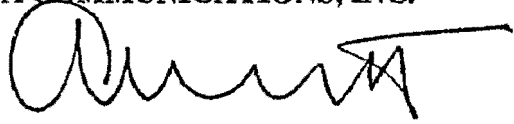
The remaining question involves the "policy ramifications" of interpreting the term "channel" to provide that any entity that makes multiple "video programming networks" available for purchase is considered an "MVPD" without regard to whether the entity provides a transmission path. The Bureau (§§ 8 and 12) sought comment on "whether and how the public will be impacted" if non-traditional video providers "are not considered MVPDs and therefore are not required to comply with regulations applicable to traditional MVPDs," and on "whether and how competition in the video distribution market (both at present and in the future) would be impacted if these entities are not considered MVPDs and therefore are not able to take advantage of" program access requirements.

Providers of multiple video programming networks compete with traditional MVPDs. To be able to carry a television station's programming on different terms, namely free, provides an unfair advantage to them and imposes an undue burden to the cable and satellite providers who are currently paying retransmission fees. Clearly, entities that provide multiple streams of video programming should be classed as MVPDs whether or not they control the transmission path. Control over the transmission path is completely immaterial to the consumer. The consumer is interested in the content of the programming, not the means of delivery. However, the definition is critical to television

station licensees, like Saga. Television stations charge MVPDs retransmission fees for the right to carry their stations. These fees are, in turn, used to support local news and entertainment programming. Without these fees, local programming would greatly suffer or be eliminated from the programming provided by television stations.

Respectfully submitted,

SAGA COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By:

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